

RALPH E. CHAMNESS (Bar No. 6511)
ERIK STRINDBERG (Bar No. 4154)
STRINDBERG SCHOLNICK & CHAMNESS, LLC
44 Exchange Place, Second Floor
Salt Lake City, Utah 84111
Telephone: 801-359-4169
Attorneys for Plaintiff

FILED
U.S. DISTRICT COURT
2005 SEP 22 A 11: 44
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

JENNIFER RICHARDS,

Plaintiff,

v.

CONVERGYS CORP.,

Defendant.

**COMPLAINT
AND JURY DEMAND**

Judge Dale A. Kimball
DECK TYPE: Civil
DATE STAMP: 09/22/2005 @ 11:44:35
CASE NUMBER: 2:05CV00790 DAK

Plaintiff Jennifer Richards ("Ms. Richards"), by and through her undersigned counsel, hereby submits this Complaint and Jury Demand against Defendant Convergys Corporation ("Convergys").

I. INTRODUCTION

1. Convergys violated Ms. Richards' right to receive pay based upon her job duties as opposed to her gender by paying Ms. Richards less than it did a male employee performing substantially similar work. Convergys also violated Ms. Richards' right to engage in the protected activity of complaining about the discriminatory nature of the

unequal pay and filing a Charge of Discrimination (“Charge”) with the Equal Employment Opportunity Commission (“EEOC”) by disciplining and constructively terminating her because she complained and filed a Charge.

II. PARTIES

2. Ms. Richards is a female, and resides in Salt Lake County, State of Utah.

3. Convergys is an Ohio corporation doing business in Salt Lake County, State of Utah. At all relevant times it was engaged in an industry affecting commerce, with annual gross sales of not less than \$500,000.00 and employed fifteen or more employees.

4. At all relevant times, Convergys was Ms. Richards’s employer as defined by the FLSA, the EPA and Title VII.

III. JURISDICTION AND VENUE

5. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345, in that this action arises under federal law, specifically the Fair Labor Standards Act of 1938 (“FLSA”) as amended, 29 U.S.C. §§ 216(c) and 217 to enforce the requirements of the Equal Pay Act of 1963, 29 U.S.C. § 206(d) (“EPA”) and pursuant to the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et.seq.*. This action is also initiated pursuant to 42 U.S.C. § 1981a.

6. The employment practices alleged to be unlawful were committed in Salt Lake County, Utah, which is within the jurisdiction of the United States District Court for the Central Division of Utah. Thus, venue is proper pursuant to 28 U.S.C. § 1391.

7. Ms. Richards filed a Charge with the EEOC on February 25, 2004. In that Charge, Ms. Richards alleged that Convergys had discriminated against her on the basis of her gender by failing to pay her equal pay for equal work. The EEOC, after investigating Ms. Richards' Charge, issued Ms. Richards a Letter of Determination finding reasonable cause to believe that Convergys had violated the EPA and Title VII by failing to pay Ms. Richards equal work for equal pay, by constructively discharging her and by retaliating against her because she filed a Charge. On September 20, 2005, the EEOC issued Ms. Richards a Notice of Right to Sue on her Title VII claims.

IV. GENERAL ALLEGATIONS

8. Ms. Richards began working for Convergys on or about February 9, 1999.

9. During her employment, Ms. Richards rose to a Lead position in Convergys' Cisco department. In that position, Ms. Richards would take cases, take phone calls, conduct training and update the website. Nick Brooks ("Mr. Brooks"), a male employee essentially performed the same duties as Ms. Richards, but did not take phone calls or conduct training.

10. Mr. Brooks' duties and Ms. Richards' duties required substantially equal work on jobs the performance of which required equal skill, effort and responsibility. The duties were performed under similar working conditions at Convergys' Murray, Utah location.

11. Convergys paid Ms. Richards \$13.77 per hour to perform the duties of a Lead.

12. Convergys paid Mr. Brooks \$14.52 an hour to perform substantially the same duties as Ms. Richards.

13. While both Ms. Richards and Mr. Brooks performed substantially the same duties and Convergys designated an equal bonus for both, a management official from Convergys ordered that Mr. Brooks receive all of the bonus money.

14. When Ms. Richards became aware that Mr. Brooks was receiving more money for performing substantially the same work, she complained to Convergys about the pay inequity. Convergys issued Ms. Richards an Employee Counseling Report to justify its failure to give Ms. Richards the bonus.

15. After receiving the discipline, Ms. Richard filed a Charge of Discrimination with the EEOC.

16. Shortly after becoming aware of the EEOC charge, Convergys issued Ms. Richards a second disciplinary warning. Convergys issued the second disciplinary warning to force Ms. Richards to terminate her employment. After issuing the second written warning, Convergys issued a policy statement which addressed two of the issues for which it had disciplined Ms. Richards. The same management official, Convergys' Senior Business Manager, ordered all of the discipline taken against Ms. Richards.

17. After receiving the second unjustified written warning, Ms. Richards requested an unpaid leave of absence. The same Convergys' management official denied Ms. Richards' request. Based upon Convergys' failure to grant her leave, the fact that she was being paid less than her male counterpart and the fact that she had been unnecessarily disciplined, Ms. Richards was compelled to terminate her employment.

V. CLAIMS FOR RELIEF

First Claim for Relief **(Violation of the EPA)**

18. Ms. Richards incorporates paragraphs 1 through 17 of this Complaint by this reference.

19. By paying Ms. Richards at a rate less than her male colleague in the same establishment for substantially equal work on a job requiring substantially equal skill, effort and responsibility under similar work conditions, Convergys violated the EPA.

20. Because Convergys purposefully and intentionally discriminated against Ms. Richards based upon her gender, in violation of the EPA by paying her less than it paid her male co-worker who was performing substantially the same work, Ms. Richards has suffered, and will continue to suffer, economic loss.

21. As a result of Convergys' violation of the EPA, Ms. Richards is entitled to recover the amount of wages she would have been paid in the absence of the violation, an equal amount as liquidated damages and prejudgment interest on those amounts.

22. Ms. Richards is entitled to recover all attorneys' fees and costs expended in prosecuting this action.

23. Ms. Richards is entitled to other such relief as this Court deems appropriate.

Second Claim for Relief
(Retaliation in Violation of the EPA)

24. Ms. Richards incorporates paragraphs 1 through 23 of this Complaint by this reference.

25. Convergys took adverse employment actions against Ms. Richards because she engaged in the protected activity of complaining about the unequal pay she was receiving, including disciplining her and constructively terminating her employment.

26. Convergys' actions constitute unlawful retaliation in violation of the EPA.

27. As a result of Convergys' actions, Ms. Richards has suffered, and will continue to suffer, both economic and non-economic loss, including, but not limited to: loss of wages and benefits, future pecuniary losses, emotional distress, and other compensatory damages.

28. As outlined above, Convergys purposefully and intentionally retaliated against Ms. Richards based upon her complaint or Charge by taking adverse employment actions against her. Ms. Richards is entitled to recover damages for all future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary losses caused by Convergys' unlawful retaliation.

29. Convergys' actions described above were done with malice or a reckless indifference to Ms. Richards' federally protected right to be free from retaliation for having complained or filing an Charge. Due to the willful and malicious nature of the retaliation against Ms. Richards, Ms. Richards is entitled to an award of punitive damages in an amount sufficient to deter Convergys from engaging in retaliatory conduct in the future.

30. Ms. Richards is entitled to recover all attorneys' fees and costs expended in prosecuting this action.

31. Ms. Richards is entitled to other such relief as this Court deems appropriate.

Third Claim for Relief
(Discrimination in Violation of Title VII)

32. Ms. Richards incorporates paragraphs 1 through 31 of this Complaint by this reference.

33. By paying a male employee more than it paid Ms. Richards for performing the same work, Convergys purposefully and intentionally discriminated against Ms. Richards in violation of Title VII.

34. Convergys' actions described above were done with malice or a reckless indifference to Ms. Richards' federally protected right to have employment decisions based upon legitimate non-discriminatory business reasons. Due to the willful and malicious nature of the discrimination against Ms. Richards, Ms. Richards is entitled to an

award of punitive damages in an amount sufficient to deter Convergys from engaging in discriminatory conduct in the future.

35. Ms. Richards is entitled to recover all attorneys' fees and costs expended in prosecuting this action.

36. Ms. Richards is entitled to other such relief as this Court deems appropriate.

Fourth Claim for Relief
(Retaliation in Violation of Title VII)

37. Ms. Richards incorporates paragraphs 1 through 36 of this Complaint by this reference.

38. Convergys took adverse employment actions against Ms. Richards because she engaged in the protected activity of complaining about the discrimination she suffered, including disciplining her and constructively terminating her employment.

39. Convergys' actions constitute unlawful retaliation in violation of Title VII.

40. As a result of Convergys' actions, Ms. Richards has suffered, and will continue to suffer, both economic and non-economic loss, including, but not limited to: loss of wages and benefits, future pecuniary losses, emotional distress, and other compensatory damages.

41. As outlined above, Convergys purposefully and intentionally retaliated against Ms. Richards based upon her complaint or Charge by taking adverse employment actions against her. Ms. Richards is entitled to recover damages for all future pecuniary

losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary losses caused by Convergys' unlawful retaliation.

42. Convergys' actions described above were done with malice or a reckless indifference to Ms. Richards' federally protected right to be free from retaliation for having complained or filing a Charge. Due to the willful and malicious nature of the retaliation against Ms. Richards, Ms. Richards is entitled to an award of punitive damages in an amount sufficient to deter Convergys from engaging in retaliatory conduct in the future.

43. Ms. Richards is entitled to recover all attorneys' fees and costs expended in prosecuting this action.

44. Ms. Richards is entitled to other such relief as this Court deems appropriate.

Request for Jury Trial

45. Ms. Richards requests that her claims be tried to a jury of her peers.

VI. PRAYER FOR RELIEF

WHEREFORE, Ms. Richards respectfully requests that the Court enter judgment in her favor and against Convergys, and award the following:

- a. Back pay, in amounts to be determined at trial;
- b. An amount equal to the amount awarded as back pay as liquidated damages;

- c. Reinstatement, or front pay in lieu of reinstatement;
- d. Emotional distress and punitive damages;
- e. Compensatory and consequential damages;
- f. Injunctive and/or declaratory relief requiring Convergys to take appropriate actions to ensure that its female employees are paid equal pay for equal work;
- g. Pre-judgment and post-judgment interest at the highest lawful rate;
- h. Attorneys' fees and costs of this action, including expert witness fees, as appropriate;
- i. Injunctive relief restraining Convergys from engaging in further discriminatory conduct; and,
- j. Any such further relief as the Court deems just and equitable.

Dated this 22nd day of September, 2005.

STRINDBERG SCHOLNICK & CHAMNESS, LLC



Ralph E. Chamness
Erik Strindberg
Attorneys for Plaintiff

Plaintiff's Address

3731 West 8850 South
West Jordan, Utah 84088

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JENNIFER RICHARDS

DEFENDANTS

CONVERGYS CORPORATION

FILED
U.S. DISTRICT COURT

(b) County of Residence of First Listed Plaintiff

SALT LAKE

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, INDICATE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Strindberg Scholnick & Chamness, LLC, 44 Exchange Place, 2nd Floor,
Salt Lake City, Utah 84111 - 801-359-4169

Attorneys (If Known)

BY: DEPUTY CLERK

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Plaintiff)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of in Item III)

(For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane 362 Personal Med. <input type="checkbox"/> 315 Airplane Product Liability 365 Personal Product Liability 368 Asbestos Personal Injury <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Liability	610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 Death <input type="checkbox"/> 535 General Penalty 40 <input type="checkbox"/> Mandamus & Other Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.)

Do not cite jurisdictional statutes unless diversity.)

Violation of the Equal Pay Act, 29 U.S.C. § 206(d) and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ None

Complaint:

☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

Judge Dale A. Kimball

DECK TYPE: Civil

DATE STAMP: 09/22/2005 @ 11:44:35

CASE NUMBER: 2:05CV00790 DAK

9/22/05 JUDGE _____ DOCKET NUMBER _____
DATE [Signature] SIGNATURE OF ATTORNEY OF RECORD _____
FOR OFFICE USE ONLY
RECEIPT # _____ AMOUNT _____ APPL _____ JUDGE _____ MAG. JUDGE _____

JS 44 Reverse (Rev. 12/96)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet